

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KELLIE PEARSON, ROGER
BURRELL, BRIAN GIVENS, and
THE LAW OFFICES OF MARK
BOOKER, on behalf of themselves
and those similarly situated,

Plaintiffs,

v.

THOMAS M. HODGSON, individually
and in his official capacity as Sheriff of
Bristol County, and SECURUS
TECHNOLOGIES, INC.,

Defendants.

I hereby certify on 4/8/21 that the
foregoing document is true and correct copy of the

- ☐ electronic docket in the captioned case
☒ electronically filed original filed on 4/8/21
☐ original filed in my office on _____

Robert M. Farrell
Clerk, U.S. District Court
District of Massachusetts

By: Jamille Kelly
Deputy Clerk

Civil Action No. 18-cv-11130-IT



ORDER CERTIFYING QUESTION TO
MASSACHUSETTS SUPREME JUDICIAL COURT

April 8, 2021

TALWANI, D.J.

For the reasons set forth in the court's March 31, 2021 Memorandum and Order [#122],
the following question of Massachusetts law is HEREBY CERTIFIED to the Massachusetts
Supreme Judicial Court pursuant to S.J.C. Rule 1:03:

Did the Massachusetts Legislature, through the provisions of 2009 Mass. Legis.
Serv. Ch. 61 (S.B. 2119) §§ 12(a), 12(c), 15, or M. G. L. ch. 127, § 3, taken
separately or together, authorize the Bristol County Sheriff's Office to raise
revenues for the Office of the Sheriff through inmate calling service contracts?

Mem. & Order 7 [#122].

The controversy in which the question arose is Plaintiffs' challenge to the Bristol County
Sheriff's Office's use of inmate calling services to generate revenue. Complaint [#1-1].¹ The

¹ The action was filed as a putative class action in the Suffolk Superior Court but was removed to
this court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

parties agreed for the purposes of Defendants Thomas M. Hodgson (“Sheriff Hodgson”) and Securus Technologies, Inc.’s (“Securus”) Motions for Judgment on the Pleadings [#61], [#65], and Plaintiffs’ Motion for Partial Summary Judgment [#70], that there was no material factual dispute relevant to the dispositive issue. Taking Plaintiffs’ well-pled allegations as true, the relevant factual background is as follows:

In May 2011, Sheriff Hodgson solicited bids for an inmate calling service at several of Bristol County’s correctional facilities through a Request for Responses (“RFR”). Compl. ¶ 28 [#1-1]; Hodgson Answer ¶ 28 [#50]. The RFR required each bidder to include in its bid “commissions” that the bidder would pay to the Sheriff based on gross revenues that the bidder received from operating the inmate calling service, including both “collect and direct dial (debit) modes.” RFR §§ 5.1.20–5.1.21 [#62-2].

On August 8, 2011, the Sheriff awarded Securus a five-year contract to serve as the vendor for the Bristol County Correctional Facilities’ inmate calling service. The contract provided that the Sheriff would receive annual funding for two on-site administrator positions at \$65,000 each, a \$75,000 annual technology fee, and “commission” in the amount of 48% of Securus’s gross revenues from the inmate calling service. Compl. ¶¶ 31, 34 [#1-1]. Between August 2011 and June 2013, Securus paid the Sheriff an aggregate of \$1,172,748.76. Id. ¶ 35.

On October 21, 2015, the Sheriff and Securus entered into a new contract for a four-year term. The new contract discontinued commissions paid to the Sheriff based on revenue but continued to fund the on-site administrator positions and annual technology fee. Furthermore, the new contract provided that these amounts would be paid by Securus through a one-time upfront payment of \$820,000 instead of \$205,000 annually over the course of the four-year contract. Id. ¶¶ 41–44.²

The court previously granted Sheriff Hodgson’s and Securus’s Motions for Judgment on the Pleadings [#61], [#65], and denied Plaintiffs’ Motion for Partial Summary Judgment on

² In the Complaint, Plaintiffs alleged that this lump sum payment was a roundabout way of continuing to pay the Sheriff commissions. See Compl. ¶ 46 [#1-1]. Plaintiffs retracted this allegation during the oral argument on the cross-motions and agreed that the 2015 contract no longer had the Sheriff continuing to collect commissions either in form, or in substance. Nevertheless, Plaintiffs continue to assert that the 2015 contract remains problematic since the Sheriff’s policy of charging *any* amount of money for phone calls is unlawful absent Legislative authority. See Mem. & Order 6 n.2 [#114].

Count I [#70], finding that the Massachusetts Legislature had authorized Sheriff Hodgson to use inmate calling services to generate revenue. See Mem. & Order [#114]. The court subsequently vacated this ruling, however, and determined that the question of law presented by the parties' cross motions should be certified to the Massachusetts Supreme Judicial Court for adjudication. See Mem. & Order [#122].

In accordance with S.J.C. Rule 1:03, § 4, the Clerk of this court is directed to forward to the Massachusetts Supreme Judicial Court, under the official seal of this court, a copy of this certification order, a copy of the docket, and copies of the documents listed in Appendix A.

The court welcomes any additional observations about relevant Massachusetts law that the Supreme Judicial Court may wish to offer. This case is STAYED pending a response to the certified question.

IT IS SO ORDERED.

Date: April 8, 2021

/s/ Indira Talwani
United States District Judge

Appendix A: Documents to be Forwarded to Massachusetts Supreme Judicial Court

- Notice of Removal [#1]
- Complaint [#1-1]
- State Court Record [#14]
- Sheriff Hodgson's Motion to Dismiss [#26] and Memorandum in Support [#27]
- Securus's Motion to Dismiss [#28] and Memorandum in Support [#29] (attachment excluded)
- Plaintiffs' Memorandum in Opposition [#34] to Sheriff Hodgson's Motion to Dismiss
- Plaintiffs' Memorandum in Opposition [#35] to Securus's Motion to Dismiss
- Securus's Reply [#40] to Plaintiffs' Opposition
- Sheriff Hodgson's Reply [#41] to Plaintiffs' Opposition
- Transcript of October 23, 2018 Motion Hearing [#43]
- December 20, 2018 Memorandum and Order [#45]
- Securus's Answer [#49]
- Sheriff Hodgson's Answer [#50]
- Sheriff Hodgson's Motion for Judgment on the Pleadings [#61], Memorandum in Support [#62], and attached exhibits [#62-1] – [#62-9]
- Securus' Motion for Judgment on the Pleadings [#65] and Memorandum in Support [#66]
- Plaintiffs' Consolidated Memorandum in Opposition [#69] to Defendants' Motions for Judgment on the Pleadings
- Plaintiffs' Motion for Partial Summary Judgment [#70], Memorandum in Support [#71], and Statement of Facts [#72]
- Sheriff Hodgson's Opposition to Motion for Partial Summary Judgment [#79] and Counter Statement of Material Facts [#80] and attached exhibits [#80-1] – [#80-6]
- Sheriff Hodgson's Reply [#81] on Motion for Judgment on the Pleadings
- Securus's Reply [#82] on Motion for Judgment on the Pleadings
- Plaintiffs' Reply [#84] on Motion for Partial Summary Judgment
- Transcript of June 11, 2020 Motion Hearing [#116]
- June 22, 2020 Memorandum and Order [#114], since vacated by March 31, 2021 Memorandum and Order [#122]
- June 22, 2020 Judgment [#115], since vacated by March 31, 2021 Memorandum and Order [#122]
- Plaintiffs' Motion to Alter or Amend Judgment [#118]
- Sheriff Hodgson's Opposition [#119]
- Securus's Opposition [#120]
- March 31, 2021 Memorandum and Order [#122]